

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

<b>ERIK J. CARDIN,</b>	)	
	)	
<b>Plaintiff,</b>	)	Civil Action
	)	No. 1:19-CV-1646
<b>v.</b>	)	
	)	May 8, 2020
<b>LEAH MARIE OLSZEWSKI,</b>	)	10:30 a.m.
	)	
<b>Defendant.</b>	)	
	)	
	)	

**TRANSCRIPT OF MOTION HEARING PROCEEDINGS**  
**(By Teleconference)**  
**BEFORE THE HONORABLE LIAM O'GRADY,**  
**UNITED STATES DISTRICT COURT JUDGE**

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MORNING SESSION, MAY 8, 2020

(10:32 a.m.)

(Discussion had off the record.)

THE COURT: Okay. Go ahead, Mr. Kurz.

MR. KURZ: If we're ready to start, I do have one disclosure. I talked to Ms. Walz, and I wanted to make sure we put it on the record.

Your Honor, in this case, while I'm the counsel in civil matters --

THE COURT REPORTER: I'm sorry, I'm sorry, counsel.

MR. KURZ: Primary counsel is Tom Carter. And I advised Ms. Walz that several years ago Mr. Carter had represented a member of your family, a legal matter, and that she should know about that. And I'll let her speak, if she has any particular concern about it.

THE COURT: Okay.

THE COURT REPORTER: I'm sorry, Your Honor, have we called the case? Has it already started? I just want to make sure that I'm on the same page.

THE COURT: Let's call the case and see who's here this morning. Thank you.

THE COURTROOM CLERK: The Court calls case 1:19-CV-1646, *Erik J. Cardin versus Leah Marie Olszewski*, for a motion hearing.

May I have the appearances, please, first for the plaintiff.

1 MR. KURZ: Yes. This is James Kurz. I represent Erik  
2 Cardin.

3 MS. WALZ: And this is Christine Walz. I represent Ms.  
4 Olszewski.

5 THE COURT: Very well.

6 MS. BECKER: This is Jennifer Becker. I also represent  
7 the defendant.

8 MS. GIERHART: Cynthia Gierhart of Holland & Knight on  
9 behalf of Leah Olszewski.

10 MR. D'OLIVO: Kevin D'Olivo on behalf of the defendant,  
11 also from Holland & Knight.

12 MR. CARLO: And Robert Farlow, also on behalf of defendant  
13 with Holland & Knight.

14 THE COURT: All right. Do we have everybody now on? Did  
15 everybody identify themselves? All right. Well, good morning to  
16 all of you. Why don't we go back to the, I guess conflict, if  
17 that's what it is, issue.

18 Ms. Walz, have you spoken with Mr. Kurz about Mr. Carter  
19 having represented my daughter, actually, in a traffic matter  
20 in -- I don't know, in Arlington County, Virginia many -- I'm not  
21 sure how many years ago; long enough so that it's not -- no  
22 longer on my mind, but -- You know, that wasn't a pleasant  
23 experience. Do you foresee any potential conflicts there?

24 MS. WALZ: No, Your Honor. We've spoken, and we do not  
25 have any objection or any concerns regarding that.

1           THE COURT: I do not. Mr. Carter and I have known each  
2 other a long time, but I have probably not even seen him for, oh,  
3 at least two or three years, and we have only a professional  
4 relationship.

5           And so I don't have any concerns myself, but thank you  
6 both for bringing it to my attention early on so that we can get  
7 it resolved.

8           All right. It's defendant's motion to dismiss. I've read  
9 the pleadings, and I've had a chance to look at the case law.  
10 And as you all know, these are pretty firmly established claims  
11 in the amended complaint. I do think that D.C. law applies to  
12 the defamation claims, and so I don't want to hear any argument  
13 on that one. I'll decide that on the pleadings.

14           I have questions about the timing of the testimony that  
15 Ms. Olszewski gave before the Armed Services Subcommittee and  
16 military personnel, and I want to understand whether that was the  
17 first alleged defamatory statements, if they were all made at  
18 that hearing.

19           And then it appears to me that, based on the pleadings,  
20 that Chairman Byer said enough at the hearing to make it pretty  
21 clear that the subject matter of the hearing was the domestic  
22 abuse and the military's handling of claims of domestic abuse.

23           So -- but I'll let you both discuss that, but I'm  
24 interested in identifying that. And why don't we do them one at  
25 a time and begin with the defamation, then. And please let us

1 know each -- you may want to split up the argument and different  
2 people may be talking, so let's make sure we identify ourselves  
3 before we begin to speak, all right?

4 MS. WALZ: Sure, Your Honor.

5 THE COURT: All right.

6 MS. WALZ: This is Christine Walz again on behalf of  
7 defendant Olszewski, and I'll be handling the argument today with  
8 regards to defamation but also in general.

9 THE COURT: Okay.

10 MS. WALZ: As we stated in our motion papers, the  
11 defamation counts in the case is based entirely on statements  
12 that are privileged because of the context in which they were  
13 made. The allegations before the Armed Services Committee were  
14 made on September 18th, 2019 before the House Armed Services  
15 Committee, a select committee on military personnel, and  
16 plaintiff alleges that each of those statements are defamatory.

17 The only allegations that are alleged in the complaint are  
18 all found in the Olszewski hearing testimony, both her written  
19 testimony and her oral testimony. One of the statements was made  
20 only verbally, but, again, all the rest are contained in her  
21 written testimony which we have attached to our papers, which the  
22 Court can consider because they are referenced in the complaint.

23 Both D.C. and Virginia recognize that there's an absolute  
24 privilege for testimony that's given in legislative hearings.  
25 Plaintiff admits that the statements at issue were all made

1 before the Congressional subcommittee, and we don't think there's  
2 any basis to dispute that the hearing was legislative.

3 As we understand it, plaintiff makes two arguments that  
4 the privilege should not apply. First, they contend that the  
5 legislative privilege is qualified; not absolute, and under D.C.  
6 law and again under both D.C. and Virginia law, the privilege is  
7 absolute, and plaintiff's argument is a misreading of *Isle of*  
8 *Wight County*, which again makes clear that the privilege is  
9 absolute.

10 And second, he contends that the Court cannot address this  
11 question on a motion to dismiss. In fact, courts routinely  
12 address the application of privileges on a motion to dismiss, and  
13 all of the facts required to establish the application of the  
14 privilege are found either on the face of the complaint, in the  
15 materials that were cited in the complaint and which we've  
16 attached to our motion, or on the congressional subcommittee's  
17 Website, which with think the Court can take judicial notice of.  
18 So, therefore, the question is properly before the Court on this  
19 motion.

20 And under D.C. law, which, again, we do believe applies,  
21 although we don't think it makes much of a difference in terms of  
22 the outcome, we do think under the choice of law analysis that  
23 D.C. law should apply, and whether a statement is privileged is  
24 an element of defamation that the plaintiff has to plead and  
25 prove.

1           And *Marsh versus Hollander*, which we cited, says that it's  
2 appropriate for the Court to consider that question of an  
3 absolute privilege on a motion to dismiss.

4           Therefore, we think the defamation count should be  
5 dismissed.

6           THE COURT: Okay. All right. Now, the November 11th,  
7 2017 text message, is that -- I did not see that being alleged as  
8 a defamatory statement. Is that your understanding, Ms. Walz?  
9 And I'll ask Mr. Kurz in a minute.

10          MS. WALZ: It is my understanding that that is not alleged  
11 to be a defamatory statement, and I don't think that that is a  
12 statement that was made to a third party.

13          THE COURT: All right. All right, Mr. Kurz, go ahead.

14          MR. KURZ: Well, Judge, beginning with the text statement.  
15 If I understand, that was from Ms. Olszewski to Sergeant Cardin.  
16 I am not aware at this time of it being published to a third  
17 party.

18          Going back to the issues, you know, we obviously had  
19 reached this with the understanding or the expectation that this  
20 was Virginia law that applied, and that -- I did, obviously,  
21 quote *Isle of Wight*. I'm not sure, Judge, how D.C. law is going  
22 to be different. We haven't -- I can't tell you that it is. I  
23 can't tell you that it is not. The -- I can say that, however,  
24 this is an affirmative defense, and some of the rules -- under  
25 the rules of this Court -- and it's something that should be



1 raised as an affirmative defense and we can address it at a later  
2 time, you can see in our briefing that we rely heavily on that,  
3 and I did not delve into the D.C. law at that time.

4 I can't either agree or disagree with Ms. Walz on exactly  
5 what the D.C. law is because it hasn't been addressed in the  
6 briefing. What I would ask the Court to do is either deny the  
7 motion with respect to Count 1, or at least give me an  
8 opportunity to replead it. I'm not sure it's going to be  
9 substantially different, but I would appreciate the opportunity  
10 to examine in greater detail the D.C. law.

11 Judge, the -- maybe this is the time to put in how I think  
12 this matter might progress, because it in some ways is not your  
13 typical lawsuit, certainly not in Federal Court.

14 I would ask the Court to deny the motion. I sent the  
15 Court a notice yesterday that the California court confirmed this  
16 week that it intends to go forward on Ms. Olszewski's protected  
17 motion -- protective order motion filed back in 2018 and  
18 continued three times at her request, but the hearing is set for  
19 May 20th, and Sergeant Cardin confirmed for me yesterday that he  
20 has a ticket and he is on his way to California for that hearing.  
21 I have every reason to believe it's going forward. The -- and  
22 I -- that in some way changes or may change the overall tenor in  
23 this case.

24 We also have a hearing scheduled for late May in  
25 Ms. Olszewski's most recent Arlington County pleading, and

1 Mr. Carter tells me that that hearing is scheduled to go forward,  
2 although he believes from his discussions that the matter will be  
3 dismissed, but it could easily be heard within the next two  
4 weeks.

5 That would give us a more complete factual basis for  
6 dealing with the overall claims here. The Court can appreciate  
7 that the real core of this case is in the relief.

8 Sergeant Cardin has been subjected to a three-year  
9 campaign where Ms. Olszewski stated objectives of having the Air  
10 Force court marshal him. There have obviously been various  
11 consequences of this, and his principle objective is to put an  
12 end to it.

13 And if it's not the defamation claim, I think the real  
14 heart of the case is the malicious prosecution. What I would  
15 suggest is that -- after the Court's ruling today, assuming that  
16 the case goes forward, as I believe it should, that we might  
17 amend the complaint to reflect whatever the courts in California  
18 and Arlington decide in the next two weeks.

19 At that point, it might be appropriate to refer this case  
20 to Judge Anderson for some kind of mediation. The -- and it just  
21 seems that these are claims that -- I mean, one of the questions  
22 we actually have is what does Ms. Olszewski plan to do in the  
23 event that the things -- if the Court rules against her. Is she  
24 going to comply with that? She's filed 13 times so far. She  
25 hasn't won yet, yet she continues to torment Sergeant Cardin.

1           The -- my past experience with Judge Anderson has been  
2 very good, as he's handled these difficult matters. I would  
3 suggest that we certainly have that as a stopping point in this  
4 progress in this case.

5           Having said that, I think I've said my point on the  
6 defamation. I would ask the Court to deny the motion to dismiss.  
7 I think we can then consider from our end more of the D.C. law.  
8 And again, if it turns out that it's -- that it is no different,  
9 and I can't tell you one way or another at this time, the -- I  
10 can come back and tell the Court that, and if the Court needs to  
11 rule one way or the other on the motion, it could do so.

12           Having said that, I still think that the core of this case  
13 is the malicious prosecution claim backed up by the tortious  
14 interference, and the bases for those claims is much broader than  
15 the statements made before Representative Byer's subcommittee.  
16 Having said that, I turn it back to the Court and Ms. Walz.

17           THE COURT: Okay. Thank you. Ms. Walz, do you want to  
18 reply?

19           MR. KURZ: Yes, Your Honor. There are so many things that  
20 are wrong with what plaintiff's counsel just said I'm having a  
21 hard time knowing where to start. I don't want to -- plaintiff's  
22 counsel may be misinformed by his client about who has requested  
23 continuances in the California matter, but it certainly wasn't  
24 Ms. Olszewski.

25           In fact, in some instances -- in some instances it was the

1 Court, and in other instances it was his client. My  
2 understanding is that that hearing is about a permanent  
3 restraining order -- or permanent protective order when, in fact,  
4 a temporary restraining order has already been issued by the  
5 California court.

6 Again, my client is prepared to go forward. We are not  
7 representing her in that case, nor do we think that that case has  
8 any real relevance to the claims that plaintiff brings here.

9 Again, D.C. law and Virginia law are both clear about the  
10 absolute privilege, and that has been very clear from our motion  
11 to dismiss. Plaintiff has had every opportunity to respond based  
12 on that. His decision not to was a choice. And, regardless, it  
13 does not impact the outcome of the case because he cannot replead  
14 the defamation case in order to -- he cannot replead anyway.  
15 That would allow him to prevail, his client to prevail.

16 Further, I'm looking at the relief requested because I  
17 understand that that {indiscernible} -- that plaintiff counsel  
18 wants to speak about, and much of it appears to be  
19 unconstitutional in terms of seeking an injunction that would bar  
20 my client from making any public statements about -- that are  
21 truthful about his client.

22 So, I don't think there's any reason to delay ruling today  
23 or when the Court is ready. I don't think that plaintiff should  
24 be given an opportunity to replead. And again, the California  
25 matter does not impact where this case should be going.

1 THE COURT: Let's move on to the tortious interference  
2 claim. And perhaps -- as I said, I read the pleadings.

3 Mr. Kurz, let me hear from you first so I understand, and  
4 then I'll let Ms. Walz respond. I'm a little confused as to  
5 whether the interference involves the Booz Allen employment or  
6 the Syracuse University MBA program. And given the timing of the  
7 different statements, meaning that a statement I guess was made  
8 in September of 2019 and he was terminated from Booz Allen in  
9 December 2018 and hired, I guess, in several months prior to  
10 that, what -- focus me in on what the business interference is,  
11 please.

12 MR. KURZ: Well, it goes back to the series of complaints  
13 that she has filed. And, again, my allegations are that her  
14 multiple complaints are specious.

15 What happens is she files for the protective orders and  
16 then she files for criminal -- she makes criminal charges.  
17 Sergeant Cardin, you know, turned himself in. He's arrested. He  
18 was incarcerated for several days.

19 The consequence of that with the continued filings is that  
20 it imperils his ability to work, specifically that he came to  
21 the -- he retired from the Air Force with a top secret clearance,  
22 and when he -- when these claims are made and they linger, what  
23 happens in the JPAS database is he's flagged and the clearance is  
24 either withdrawn or he's disqualified.

25 And, you know, in the Booz Allen situation, he's working

1 for them, and then what happens is, you know, he has no  
2 clearance, and he can't continue to work for them. And it goes  
3 beyond Booz Allen. His principle and most lucrative business  
4 opportunities are in the intelligence community associated with  
5 the defense contractors in this area. Understandably, he cannot  
6 be employed by them as long as this persists.

7 So that's where it comes in. She's made the claims.  
8 She's made them repeatedly -- I have in front of me the graph  
9 that shows 13 times -- and the consequence of that is that it has  
10 compromised his top secret clearance which is -- affects his  
11 employment, and it's a direct connection.

12 Judge, people in this area understand it, but people  
13 elsewhere may not. But it's not -- not only is it direct, but  
14 Ms. Olszewski is sophisticated enough through her military  
15 connections and knows how these things work.

16 The claims that we've made, obviously, is that it's  
17 entirely malicious. I think it comes through in the claim that  
18 she determined where he was working, she determined that he came  
19 to Washington to work in the defense establishment, and  
20 continuing her claims would have the consequence of doing exactly  
21 what happened. It would compromise his top secret clearance and  
22 make him unemployable. So that's the point of the tortious  
23 interference.

24 I think if you go through the business relationship with  
25 Booz Allen -- and certainly not only with Booz Allen but his

1 ability to be employed based on -- with the top secret clearance,  
2 there certainly is an economic benefit to it. She knew of it,  
3 knew of his plans to come back here and determined that he was,  
4 in fact, working in this area, and her conduct was intentional,  
5 and it would have the consequences that she intended. And under  
6 the continuing elements, there was clearly damage to the  
7 plaintiff. We're talking about an at-will contract here. Her  
8 continual and repeated claims, they are an improper method, and  
9 it just bristles with malice.

10 So, I think in that case, Judge, we have certainly met all  
11 of the requirements for tortious interference under Virginia law.  
12 And, you know, they may argue that D.C. law applies to  
13 defamation, there shouldn't be any question that Virginia law  
14 covers the malicious prosecution and the tortious interference  
15 claims.

16 THE COURT: Okay. All right. Thank you. All right,  
17 Ms. Walz.

18 MS. WALZ: Yes, Your Honor. In order to survive a motion  
19 to dismiss, the plaintiff has to allege sufficient facts to state  
20 a claim that relief is plausible. They're not entitled to just  
21 jump to legal conclusions and have the Court accept those legal  
22 conclusions, which is exactly what they're doing here.

23 The attenuated chain of inferences that are required to  
24 credit plaintiff's theory are wholly insufficient. The  
25 complaint -- the amended complaint is devoid of any specific

1 facts that would establish that Ms. Olszewski directly or  
2 indirectly accessed the JPAS database, that she knew of his --  
3 specifically knew of Mr. Cardin's employment with Booz Allen,  
4 which even listening to plaintiff's counsel today, I don't hear  
5 him to be saying that she had specific knowledge of the  
6 employment, nor did she, nor that she took any specific action to  
7 raise red flags in the JPAS database. It appears from  
8 plaintiff's counsel's argument that he's arguing that making a  
9 claim for a protective order is sufficient to establish a basis  
10 for an element of tortious interference. We don't think that  
11 that can, in fact, be a basis for a tortious interference claim  
12 because that's not an improper method, which is required under  
13 Virginia law, and that's *Perk versus Vector Resources Group*. And  
14 so this claim also fails because it fails to plausibly state a  
15 claim for tortious interference.

16 THE COURT: All right.

17 MR. KURZ: Judge, if I may respond to that.

18 THE COURT: Go ahead, Mr. Kurz.

19 MR. KURZ: There's also multiple police reports. It's not  
20 a single shot at a protective order. I have 13 things that she  
21 has done in filing and pursuing claims with the Air Force, the  
22 secretary of the Air Force, the Office of Special Investigations,  
23 protective orders in three different jurisdictions, criminal  
24 claims in -- certainly in three different Virginia jurisdictions,  
25 and police reports out in California. She's out of control, and



1 I think the Court can take a look at the entirety of what she's  
2 done here and say that, you know, she knew what she was doing, it  
3 was intentional, and she intended the consequences here.

4 With respect to JPAS, she doesn't have to get into JPAS  
5 and change it, but she does have the knowledge that if she makes  
6 a series of claims, that that will happen, and that will have the  
7 consequence that she seeks. What we've alleged is that she  
8 certainly had knowledge, she had the ability to get into the  
9 database, and she certainly had the knowledge or the ability to  
10 determine where he was working, and we believe she knew exactly  
11 where he was and what he was doing, and it was all part of her  
12 campaign, which she's been very clear about. She wants him court  
13 marshaled, and it's not an attenuated argument that she wants to  
14 destroy him. And part of that is interfering with his employment  
15 with Booz Allen and, in fact, his employment in the entire  
16 defense community. I think it more than covers the basis for  
17 tortious interference.

18 THE COURT: All right. Thank you. Ms. Walz, the  
19 malicious prosecution.

20 MS. WALZ: Yes, Your Honor. On malicious prosecution,  
21 tort is favored and has heightened pleading standards to prevent  
22 a fear of reprisal under exactly these circumstances, and Mr.  
23 Cardin fails to meet these standards.

24 At most, he alleges that Ms. Olszewski omitted facts about  
25 the status of other protective orders when seeking an additional

1 protective order against Mr. Cardin. But, again, we dispute that  
2 fact, but accepting it as true, the status of other  
3 jurisdictions's determinations about the need for protective  
4 orders does not establish a lack of probable cause for seeking a  
5 protective order, which is a required element of any malicious  
6 prosecution claim. So, therefore, again he fails to state a  
7 claim here.

8 And again, I think, when you look at how the state court  
9 system and local court systems are set up, this is a layperson  
10 who is seeking to protect herself and trying to understand the  
11 court system in the process, and so there's no effort to destroy  
12 Mr. Cardin, there's an effort to protect herself.

13 And with the patchwork of how our state court systems and  
14 local systems work, she is simply trying to avail herself of the  
15 court system and the police system in order to protect herself.  
16 So, again, we think this fails to state a claim for malicious  
17 prosecution.

18 THE COURT: Okay. All right, Mr. Kurz. I think, having  
19 listened to you this morning, you're focused on the Alexandria  
20 stalking charge, but also, perhaps going back to the complaints  
21 to the Air Force and to the family hearing, where is the focus of  
22 the malicious prosecution claim, or is it as, perhaps, as broad  
23 as you just identified?

24 MR. KURZ: Oh, I think there are several examples here,  
25 Judge. Certainly the Alexandria stalking claim, which in this

1 case led to his incarceration for five days; you know, her most  
2 recent claim in Arlington County, but I appreciate that that  
3 hasn't yet been resolved; the -- I would go back to the claims  
4 she made in California, which the prosecutors rejected, and I  
5 would go back to the -- after that to the her campaign with the  
6 Air Force. I mean, she's certainly attempting to have him court  
7 marshaled, and she's gone through multiple steps in the Air Force  
8 attempting to get that.

9 This isn't a situation of Ms. Olszewski trying to protect  
10 herself. I mean, you go back to the text that she sent in  
11 November of 2017. I mean, this isn't telling Sergeant Cardin go  
12 away. I mean, he's trying to get as far away from her as he can.  
13 She is telling him, I'm going to destroy you, and right down  
14 through the Air Force, through the District Attorney, turning to  
15 his MBA programs, across the board at every point. So I've got  
16 several prosecutions that she's initiated that have all turned  
17 against her, and the -- I believe I can come back in a few weeks  
18 and tell you the same thing happened in Arlington County. One of  
19 the points that we made in the brief, Judge, when she pursued the  
20 Alexandria stalking charge, she pursued it criminally and then  
21 she pursued a protective order. She had a trial. The general  
22 district court, you know, rejected it, and then when she turned  
23 around to appeal it to the circuit court, the -- I think she came  
24 up on November 1st, and her accountant [sic] said she withdrawals  
25 the complaint, not telling the Court that the day before she

1 filed yet another criminal case against Sergeant Cardin, this  
2 time in Arlington. She doesn't get away with one jurisdiction,  
3 she simply goes to another.

4 So, to answer your question, there are multiple examples,  
5 Arlington being the latest, but certainly starting with  
6 California, with Alexandria, and then the entirety of the  
7 situation where she's seeking to have Sergeant Cardin court  
8 marshaled by the Air Force. And I point out that at every  
9 juncture it has turned out badly for her. So, when I go back  
10 through the elements of malicious prosecution in Virginia, I  
11 think we touch on all of them, Judge.

12 THE COURT: All right. Thank you. Ms. Walz, do you want  
13 to reply?

14 MS. WALZ: Yes, Your Honor. Again, we -- it appears that  
15 we're far outside of the four corners of plaintiff's complaint,  
16 but, nonetheless, certainly with regards to any military action,  
17 as we stated in our reply, Mr. Cardin has suffered no harm from  
18 any of the complaints that were legal investigations because none  
19 of those resulted in prosecutions, and plaintiff does not plead  
20 that he had any special injury, as he's required to.

21 In fact, the complaint makes clear that Mr. Cardin retired  
22 from the Air Force as planned with an honorable discharge and  
23 full benefits.

24 Further, with regards to these other claims, again the  
25 question is, was there probable cause for making charges, and, in

1 fact, in all instances there were and plaintiff has failed to  
2 allege that there was not. Nothing that he has alleged would  
3 rise to that level.

4 THE COURT: Well, okay. I don't need to hear argument on  
5 the anti-SLAPP statute. It's largely consistent with the law in  
6 the defamation claims.

7 Here's what we're going to do. I'm going to allow Mr.  
8 Kurz to file a second amended complaint. And, unfortunately, I  
9 can't wait to see what happens in California or Arlington, if  
10 those cases are continued again, but hopefully maybe they will be  
11 resolved, and, as a result, they will be that further  
12 information.

13 The tortious interference and malicious prosecution claims  
14 I think now have been brought more into focus by the pleadings  
15 and our arguments heard today, and Mr. Kurz should consider those  
16 in repleading Counts 2 and counts 3 to focus on some of the  
17 deficiencies in the -- in those two counts.

18 Count 1, I understand that defamation is an affirmative  
19 defense. On the other hand, Mr. Kurz, you have to look closely  
20 at whether you have a good faith basis to move forward with the  
21 defamation claim if it is, in fact, congressional testimony, and  
22 there appears to be adequate support that it was given at a  
23 hearing with a legislative purpose, and only move forward with  
24 that Count 1 in any repleading if you think that it will survive  
25 the affirmative defense. Otherwise, we're just wasting all of

1 our time, and the focus really should be on the remaining two  
2 counts. This -- I understand both parties' frustrations. It's  
3 quite clear that Mr. Cardin is denying the allegations that  
4 Ms. Olszewski has brought against him. In so many of these  
5 jurisdictions the courts have looked at the he said, she said, no  
6 other evidence being present, and essentially throwing up their  
7 hands and said I'm not going to move forward on the prosecutions  
8 of these cases or, perhaps, continue a temporary restraining  
9 order, protective order, and turn it into a permanent protective  
10 order because there isn't sufficient evidence, but that is the  
11 fairly likely outcome of further proceedings, but I'll certainly  
12 wait to see where that goes.

13 So what that leaves is the parties in a position where  
14 Mr. Cardin has filed this lawsuit obviously to try and stop  
15 further prosecutions. And, Ms. Walz, you mentioned some of the  
16 relief sought, that that is squarely up against First Amendment  
17 freedoms, but I would think that both parties would be interested  
18 in the resolution of this matter because it has been going on for  
19 three years, and the -- I think Ms. Olszewski has had a full  
20 opportunity to make her positions known, and I'm not sure where  
21 else she could turn, if she wanted to continue on this front.

22 And so I would hope that there would -- it would be  
23 possible to resolve this case. And, as Mr. Kurz said, you know,  
24 Judge Anderson is the best mediator in the courthouse, and I  
25 think it would be very beneficial to have a mediation with Judge

1 Anderson. After June 10th, I'm going to order you to contact  
2 his -- I'm going to order you to contact his chambers and be in  
3 next week with available dates after June 10th so that he can  
4 attempt to resolve this before the litigation moves any further,  
5 because it's quite clear that resolution is likely to be made  
6 outside of the confines of the complaint. And perhaps there's --  
7 the parties can work together on a way to resolve this short of  
8 protracted litigation.

9 And so I will direct you all to call Judge Anderson's  
10 chambers next week and set up a date. Mr. Kurz, I'll give you 45  
11 days to file a second amended complaint. I hope that will give  
12 you the opportunity to get in and see Judge Anderson before that  
13 is necessary. And if you advise me as to what date you have with  
14 Judge Anderson, if it's relatively close to that 45 days, I'll  
15 give you a little additional time so that you can try to mediate  
16 the case before the amended, second amended complaint needs to be  
17 filed. And I hope that you can resolve it, and if you can't,  
18 then we'll move forward.

19 All right. Is there anything else?

20 MR. KURZ: Thank you. Judge O'Grady, I'll talk to Ms.  
21 Walz, and we'll contact Judge Anderson's chambers, set up a -- at  
22 least, if everyone is willing, set up a mediation date with him,  
23 and we'll go forward, and we will keep you abreast of the  
24 developments in the case.

25 THE COURT: Okay. All right. Thank you. Anything else

1 we need to talk about this morning?

2 MR. KURZ: I don't believe so, Judge.

3 MS. WALZ: Nothing, Your Honor.

4 THE COURT: All right. Well, Ms. Walz, I hope that you're  
5 safe out there in New York City. I have lots of friends and  
6 relatives, and it's been a really terrible time there, and so I  
7 hope that you've got better days ahead up there, and I wish you  
8 all -- stay safe wherever we all are, and we'll talk to you all  
9 soon.

10 MR. KURZ: Thank you.

11 MS. WALZ: Thank you, Your Honor.

12 THE COURT: All right. Bye-bye.

13 (Proceedings adjourned at 11:25 a.m.)  
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C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that  
the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

/s/ Scott L. Wallace

5/28/20

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**Scott L. Wallace, RDR, CRR**  
**Official Court Reporter**

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**Date**